

**ASSEMBLY BILL**

**No. 583**

**Introduced by Assembly Member Jackson**

February 21, 2001

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An act to amend Sections 2100, 2102, 2104, and 2105 of the Family Code, relating to dissolution of marriage.

LEGISLATIVE COUNSEL'S DIGEST

AB 583, as introduced, Jackson. Dissolution of marriage: community property.

Existing law requires a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest to be made in a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties. Existing law provides that each party has a continuing duty to update and augment that disclosure to the extent there have been any material changes, as specified.

This bill would modify the provision regarding each party's continuing duty to update and augment his or her disclosure by providing that each party shall do so fairly, fully, accurately, and immediately upon material change.

Existing law requires each party, from the date of separation to the date of the distribution of the community property, to provide the other party with an accurate and complete written disclosure of any investment opportunity that presents itself after the date of separation, but that results from any investment of either spouse from the date of marriage to the date of separation, inclusive. Existing law requires that written disclosure be made in sufficient time for the other spouse to

make an informed decision as to whether he or she desires to participate in the investment opportunity.

This bill would additionally require the disclosure to contain any business or other potential income-producing opportunity that presents itself after the date of separation, but that results from any investment, business activity, training or education of either spouse from the date of marriage to the date of separation, inclusive. The bill would require that the written disclosure be made in time for the other spouse to make an informed decision as to whether he or she desires to participate in the business or other potential income-producing opportunity.

Existing law requires, after or concurrently with service of the petition for dissolution or nullity of marriage or legal separation of the parties, each party to serve on the other party a preliminary declaration of disclosure, executed under penalty of perjury on a form prescribed by the Judicial Council.

This bill would additionally provide that the party, and his or her attorney, if any, shall be subject to monetary sanctions for fraud in the preliminary or final declaration of disclosure, or for any failure to disclose assets or liabilities or business, investment, or potential income-producing opportunities that amount to gross negligence.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 2100 of the Family Code is amended to
- 2 read:
- 3 2100. The Legislature finds and declares the following:
- 4 (a) It is the policy of the State of California (1) to marshal,
- 5 preserve, and protect community and quasi-community assets and
- 6 liabilities that exist at the date of separation so as to avoid
- 7 dissipation of the community estate before distribution, (2) to
- 8 ensure fair and sufficient child and spousal support awards, and (3)
- 9 to achieve a division of community and quasi-community assets
- 10 and liabilities on the dissolution or nullity of marriage or legal
- 11 separation of the parties as provided under California law.
- 12 (b) Sound public policy further favors the reduction of the
- 13 adversarial nature of marital dissolution and the attendant costs by
- 14 fostering full disclosure and cooperative discovery.



(c) In order to promote this public policy, a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties. Moreover, each party has a continuing duty to *fairly, fully, accurately, and immediately* update and augment that disclosure to the extent there have been any material changes so that at the time the parties enter into an agreement for the resolution of any of these issues, or at the time of trial on these issues, each party will have as full and complete knowledge of the relevant underlying facts ~~as is reasonably possible under the circumstances of the case.~~

SEC. 2. Section 2102 of the Family Code is amended to read:

2102. From the date of separation to the date of the distribution of the community *or quasi-community* asset or liability in question, each party is subject to the standards provided in Section 721, as to all activities that affect the property and support rights of the other party, including, but not limited to, the following activities:

(a) The accurate and complete disclosure of all assets and liabilities in which the party has or may have an interest or obligation and all current earnings, accumulations, and expenses.

(b) The accurate and complete written disclosure of any investment, *business, or other potential income-producing* opportunity that presents itself after the date of separation, but that results from any investment, *business activity, training, or education* of either spouse from the date of marriage to the date of separation, inclusive. The written disclosure shall be made in sufficient time for the other spouse to make an informed decision as to whether he or she desires to participate in the investment, *business, or other potential income-producing* opportunity. In the event of nondisclosure of such an investment opportunity, the division of any gain resulting from that ~~investment~~ opportunity is governed by the standard provided in Section 2556.

(c) The operation or management of a business or an interest in a business in which the community may have an interest.

SEC. 3. Section 2104 of the Family Code is amended to read:

1     2104. (a) After or concurrently with service of the petition  
2 for dissolution or nullity of marriage or legal separation of the  
3 parties, each party shall serve on the other party a preliminary  
4 declaration of disclosure, executed under penalty of perjury on a  
5 form prescribed by the Judicial Council. The commission of  
6 perjury on the preliminary declaration of disclosure may be  
7 grounds for setting aside the judgment, or any part or parts thereof,  
8 pursuant to Chapter 10 (commencing with Section 2120), in  
9 addition to any and all other remedies, civil or criminal, that  
10 otherwise are available under law for the commission of perjury.  
11 *The party and his or her attorney, if any, shall be subject to*  
12 *monetary sanctions for any fraud in the preliminary declaration of*  
13 *disclosure, or any failure to disclose assets or liabilities or*  
14 *business, investment, or potential income producing*  
15 *opportunities, that amounts to gross negligence.*

16     (b) The preliminary declaration of disclosure shall not be filed  
17 with the court, except on court order; however, the parties shall file  
18 proof of service of the preliminary declaration of disclosure with  
19 the court.

20     (c) The preliminary declaration of disclosure shall set forth  
21 with sufficient particularity, that a person of reasonable and  
22 ordinary intelligence can ascertain, all of the following:

23     (1) The identity of all assets in which the declarant has or may  
24 have an interest and all liabilities for which the declarant is or may  
25 be liable, regardless of the characterization of the asset or liability  
26 as community, quasi-community, or separate.

27     (2) The declarant's percentage of ownership in each asset and  
28 percentage of obligation for each liability where property is not  
29 solely owned by one or both of the parties. The preliminary  
30 declaration may also set forth the declarant's characterization of  
31 each asset or liability.

32     (d) A declarant may amend his or her preliminary declaration  
33 of disclosure without leave of the court. Proof of service of any  
34 amendment shall be filed with the court.

35     (e) Along with the preliminary declaration of disclosure, each  
36 party shall provide the other party with a completed income and  
37 expense declaration unless an income and expense declaration has  
38 already been provided and is current and valid.

39     SEC. 4. Section 2105 of the Family Code is amended to read:

2105. (a) Except by court order for good cause or as provided in subdivision (c), before or at the time the parties enter into an agreement for the resolution of property or support issues other than pendente lite support, or, if the case goes to trial, no later than 45 days before the first assigned trial date, each party, or the attorney for the party in this matter, shall serve on the other party a final declaration of disclosure and a current income and expense declaration, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of perjury on the final declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury. *The party, and his or her attorney, if any, shall be subject to monetary sanctions for any fraud in the final declaration of disclosure, or any failure to disclose assets or liabilities or business, investment, or potential income-producing opportunities, that amounts to gross negligence.*

(b) The final declaration of disclosure shall include all of the following information:

(1) All material facts and information regarding the characterization of all assets and liabilities.

(2) All material facts and information regarding the valuation of all assets that are contended to be community property or in which it is contended the community has an interest.

(3) All material facts and information regarding the amounts of all obligations that are contended to be community obligations or for which it is contended the community has liability.

(4) All material facts and information regarding the earnings, accumulations, and expenses of each party that have been set forth in the income and expense declaration.

(c) The parties may stipulate to a mutual waiver of the requirements of subdivision (a) concerning the final declaration of disclosure by execution of a waiver in a marital settlement agreement or by stipulated judgment or a stipulation entered into in open court. The waiver shall include all of the following representations:

(1) Both parties have *fairly, fully, and accurately* complied with Section 2104 and the preliminary declarations of disclosure have been completed and exchanged, *and the parties have accurately*

1 *and completely disclosed in writing any investment, business, or*  
2 *other potential income-producing opportunity resulting from any*  
3 *investment, business activity, training or education of either*  
4 *spouse from the date of marriage to the date of separation, but that*  
5 *presents itself after the date of service of the preliminary*  
6 *declaration of disclosure.*

7 (2) Both parties have completed and exchanged a current  
8 income and expense declaration.

9 (3) The waiver is knowingly, intelligently, and voluntarily  
10 entered into by each of the parties.

11 (4) Each party understands that by signing the waiver, he or she  
12 may be affecting his or her ability to have the judgment set aside  
13 as provided by law.

14 (d) Whether execution of a mutual waiver of the final  
15 declaration of disclosure requirements pursuant to subdivision (c)  
16 will affect the rights of either party to have the judgment set aside  
17 or will affect the fiduciary obligations of each to the other shall be  
18 decided by a court based on the law and the facts of each particular  
19 case. The authority to execute a mutual waiver provided by this  
20 section is not intended, in and of itself, to affect the law regarding  
21 the fiduciary obligations owed by the parties, the parties' rights  
22 with respect to setting aside a judgment, or any other rights or  
23 responsibilities of the parties as provided by law.

24 (e) In making an order setting aside a judgment for failure to  
25 comply with this section, the court may limit the set aside to those  
26 portions of the judgment materially affected by the nondisclosure.

27 (f) As to any judgment entered prior to January 1, 1996, the  
28 rights of any party to have any or all of the judgment set aside for  
29 failure to serve and file final declarations of disclosure, and the  
30 validity of any alleged waiver of the disclosure requirement, shall  
31 be subject to this section.

